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IN THE
COURT OF APPEALS OF INDIANA

RICHARD JOE MOSLEY, SR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 52A04-0802-CR-76
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Rosemary Higgins Burke, Judge
Cause No. 52C01-0703-FA-64

July 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Richard Mosley, Sr., appeals his convictions and his thirty-year sentence for Class A felony dealing in methamphetamine, Class D felony possession of chemical reagents or precursors with intent to manufacture a controlled substance, Class D felony maintaining a common nuisance, Class D felony resisting law enforcement, and Class A misdemeanor possession of marijuana. We affirm in part, reverse in part, and remand.

Issue

Mosley raises five issues. We address the dispositive issue, which we restate as whether the trial court properly admitted evidence obtained as a result of police officers stopping Mosley.

Facts

On March 13, 2007, the Indiana State Police and the Peru Police Department were executing a search warrant for a house, outbuildings, storage sheds, campers, mobile homes, and other vehicles located at 2459 West 900 North in Macy. The primary house was owned and occupied by Morris Depoy. Laurie Martin also lived in the house. No one was home when the police officers arrived and, before entering the house, they called animal control to tranquilize a very aggressive dog. While the police waited for animal control, a pick up truck pulled into the driveway behind two "semi-marked"[1] police cars and backed out at a "high rate of speed." Tr. p. 105. The driver, Mosley, changed gears

[1] The police cars were considered semi-marked cars because they had no "light bars" on the roof. Tr. p. 104. However, they were fully painted with police markings and had police license plates and "rear deck lights." Id.

in "a little bit rougher manner than normal." Id. When the truck started out of the driveway, the police officers ordered Mosley to stop. Despite the order, Mosley fled, and a chase ensued. The chase ended when Mosley's truck became stuck in a muddy field. Mosley was apprehended, and marijuana and methamphetamine were found in the area surrounding Mosley's truck. During an interview with police, Mosley admitted to manufacturing methamphetamine the previous night.

When the house and surrounding property were eventually searched, the police searched a camper located on the property. They discovered several items associated with the manufacturing of methamphetamine and items belonging to Mosley in and around the camper.

The State charged Mosley with two counts of Class A felony dealing in methamphetamine, Class D felony possession of chemical reagents or precursors, Class D felony maintaining a common nuisance, Class D felony resisting law enforcement, and Class A misdemeanor possession of marijuana. On September 28, 2007, Mosley filed a motion to suppress evidence obtained following the stop and a motion to suppress the statement he gave to police.

Immediately prior to trial, the State moved to dismiss one of the Class A felony dealing charges. The trial court also heard evidence regarding Mosley's statement to police and denied that motion to suppress. Regarding the motion to suppress alleging the illegal stop, the prosecutor suggested that for the sake of judicial economy, the trial court hear evidence and rule on the motion during the course of the trial. After some of the State's witnesses testified and before the witness for the State police laboratory testified,

the trial court denied Mosley's other motion to suppress. The jury found Mosley guilty as charged, the trial court sentenced him to thirty years executed, and he now appeals.

Analysis

Mosley argues that the trial court improperly admitted evidence obtained after the stop of his truck because the stop was illegal under the Fourth Amendment. He claims that the stop was not supported by reasonable suspicion and the evidence obtained after the stop, including his statement to police, should be suppressed.

Although Mosley challenged the admission of the drugs in a motion to suppress, he appeals following the admission of the evidence at trial. Accordingly, the issue is framed as whether the trial court abused its discretion by admitting the evidence at trial. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). "Our standard of review for rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by an objection at trial." Id. We do not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. Id. We also consider uncontroverted evidence favoring Mosley. See id.

"The Fourth Amendment to the United States Constitution prohibits 'unreasonable searches and seizures' by the Government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." State v. Atkins, 834 N.E.2d 1028, 1032 (Ind. Ct. App. 2005) (citations omitted), trans. denied. Nevertheless, a police officer may briefly detain a person without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from

those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity "'may be afoot.'" Id. (citations omitted).

"Reasonable suspicion is a 'somewhat abstract' concept, not readily reduced to 'a neat set of legal rules.'" Id. (citations omitted). When making a reasonable suspicion determination, we examine the totality of the circumstances of the case to see whether the detaining officer had a "'particularized and objective basis'" for suspecting legal wrongdoing. Id. (citations omitted). The reasonable suspicion requirement is met when the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur. Id. Our review of a trial court's ultimate determination regarding reasonable suspicion is de novo. Id.

The facts leading to the police officer's command to stop are largely undisputed. The police were waiting to execute a search warrant when they saw Mosley approaching and slowing down. Mosley pulled his truck into a driveway behind two semi-marked police cars. He then backed out at a "higher rate of speed" than a car that is backing out normally and put "the transmission from one gear to another in a little bit rougher manner than normal." Tr. p. 105. As Mosley started eastbound out of the driveway, the police instructed him to stop. It is this moment from which we determine whether there was reasonable suspicion to support the stop.

Under these facts, the claim of reasonable suspicion is based on Mosley pulling into a driveway behind two police cars and backing out. Even backing out at a high rate of speed and changing gears roughly is not enough, in our opinion, to create reasonable

suspicion that criminal activity may be afoot. This is especially true when considering the testimony of Trooper Paul Daugherty, who stated that he had not observed Mosley do anything illegal. In fact, Trooper Daugherty was questioned, "You hadn't observed the vehicle do anything that would rise to the level of I need to stop this vehicle, correct?" Id. at 111. He answered, "No." Id.

There is no evidence that at the time of the command to stop the police officers were aware of any association between Mosley or his truck and the house that was being searched. Nor is there evidence that at that time the police were aware of a connection between Mosley and any illegal activity. Without such knowledge, we cannot say that the act of pulling into a driveway of a house where police officers are waiting to execute a search warrant and quickly backing out creates reasonable suspicion that criminal activity may be afoot.

Without reasonable suspicion to support the stop, any evidence obtained as a result of the search, including Mosley's subsequent statement to the police, was inadmissible. See Hanna v. State, 726 N.E.2d 384, 389 (Ind. Ct. App. 2000) ("The 'fruit of the poisonous tree' doctrine is one facet of the exclusionary rule of evidence which bars the admissibility in a criminal proceeding of evidence obtained in the course of unlawful searches and seizures."). Although there is other independently obtained evidence from the search of the house and the surrounding property indicating that Mosley was involved in the manufacturing of methamphetamine, the State makes no argument that the

admission of the evidence obtained as a result of the illegal stop was harmless. Thus, we reverse Mosley's drug-related convictions.[2]

As for the Class D felony resisting law enforcement conviction, Mosley makes no argument that the evidence of his resisting was improperly admitted or insufficient to support the conviction. As such, this conviction stands. See Robinson v. State, 814 N.E.2d 704, 708 (Ind. Ct. App. 2004) (observing that a private citizen may not use force in resisting a peaceful arrest by an individual known to be a police officer performing his or her duties regardless of whether the arrest in question is lawful or unlawful). Because he does not specifically challenge his three-year sentence for resisting, we do not address the appropriateness of this sentence.

Conclusion

Because there was not reasonable suspicion to justify stopping Mosley, the trial court improperly admitted evidence obtained as a result of the stop. As such we reverse Mosley's drug-related convictions and leave intact his Class D felony resisting law enforcement conviction. We affirm in part, reverse in part, and remand.

Affirmed in part, reversed in part, and remanded.

MAY, J., and MATHIAS, J., concur.

[2] We do not address Mosley's argument regarding improperly admitted hearsay testimony because should the State retry him, they might call Thomas Hackworth to testify and avoid the hearsay and Confrontation Clause issues raised by Mosley on appeal.